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EXAMINER	
BROPHY, MATTHEW J	
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2191	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/765,511	WILLIS, EDWARD SNOW	
	Examiner	Art Unit	
	MATTHEW J. BROPHY	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 February 2009*.

2a)☒ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10,12 and 13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10, 12 and 13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This office action is in response to amendment filed August 31, 2009

2. Claims 1-10, 12 and 13 are now pending.

Continued Examination Under 37 CFR 1.114

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 31, 2009 has been entered.

Response to Amendment

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claim 1-10, 12 and 13 rejected on the ground of nonstatutory double patenting over claim of U. S. Patent No. 7,222,340 since the claims in view of Birum et al (2003/0221189), in view of Yu et al (USPN 6,597,908), if allowed, would improperly extend the "right to exclude" already granted in the patent.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees.

A timely filed terminal disclaimer in compliance with 37 CFR 1.321 (c) or 1.321 (d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Regarding a non-statutory obvious type double patenting rejection. MPEP §804 states:

> A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would

> have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); and In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985)….
> A double patenting rejection of the obviousness-type>, if not based on an anticipation rationale,< is "analogous to [a failure to meet] the nonobviousness requirement of 35 U.S.C. 103" except that the patent principally underlying the double patenting rejection is not considered prior art. In re Braithwaite, 379 F.2d 594, 154 USPQ 29 (CCPA 1967). Therefore, *>the< analysis employed in an obviousness-type double patenting rejection parallels the guidelines for analysis of a 35 U.S.C. 103 obviousness determination. In re Braat, 937 F.2d 589, 19 USPQ2d 1289 (Fed. Cir. 1991); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985).

Here, with the exception of the bolded elements, the claims limitations of the present application are obvious in view of the aligned limitations from 7,222,340 described below.

Present Application Claims	Patent 7,22,340 Claims
1. A method of dynamically managing non-volatile memory items on a wireless device through a network, said method comprising the steps of:	1. A method of dynamically managing non-volatile memory items in a wireless device from non-volatile memory item values stored in a software load on said wireless device, said method comprising the steps of:
when connecting to said network, checking for a unique identifier item stored in said non-volatile memory items;	checking the non-volatile memory items for a unique identifier item;
if said unique identifier item exists, checking whether a value stored in said unique identifier item is the same as a software identifier located in software on said wireless device;	if said unique identifier item exists, comparing an identifier stored within said unique identifier item with a software identifier located in software on said wireless device;
	and if said unique identifier item does not

if said unique identifier item does not exist or said value is different from said software identifier, **sending said software identifier along with an identifier indicating a particular carrier company associated with the wireless device to said network; receiving from said network a set of changes related to said software identifier;** executing said set of changes to update said non-volatile memory items; and writing said software identifier to said unique identifier item; otherwise end.	exist or if said identifier is different from said software identifier, performing the steps of: updating said non-volatile memory items from said non-volatile memory item values stored in the software load on said wireless device; and writing said software identifier to said unique identifier item; else performing no update on said non-volatile memory items.
2. (previously presented) The method of claim 1, wherein said unique identifier item value and said software identifier are operating system version numbers of software on said wireless device.	2. The method of claim 1, wherein said unique identifier and said software identifier are operating system version numbers of software on said wireless device.
3. (original) The method of claim 1, wherein said writing step is performed after said updating is complete.	3. The method of claim 1, wherein said writing step is performed after said updating step is complete.
4. (previously presented) The method of claim 1, wherein said updating allows rollback to a previous soft-ware version.	4. The method of claim 1, wherein said updating step allows rollback to a previous software version.
5.	5. The method of claim 4, wherein said

(previously presented) The method of claim 4, wherein the updating step creates a new non-volatile memory item rather than replacing an existing non-volatile memory item to facilitate rollback to said existing non-volatile memory item.	updating step preferably creates a new non-volatile memory item rather than replacing an existing non-volatile memory item to facilitate rollback to said existing non-volatile memory item.
6. (original) The method of claim 5, wherein said updating step does not delete non-volatile memory items that have previously been created.	6. The method of claim 5, wherein said updating step does not delete non-volatile memory items that have previously been created.
7. (previously presented) The method of claim 6, wherein non-volatile memory items managed under other non-volatile memory management schemes are not updated in said updating step.	7. The method of claim 6, wherein non-volatile memory items managed under other non-volatile memory items management schemes are not updated in said updating step.
8. (Original) The method of claim 5, wherein software on said wireless device includes a mapping from old non-volatile memory items to new non-volatile memory items.	8. The method of claim 5, wherein software on said wireless device includes a mapping from old non-volatile memory items to new non-volatile memory items.
9. (original) The method of claim 8, wherein said mapping is modified using said set of changes.	8. The method of claim 5, wherein software on said wireless device includes a mapping from old non-volatile memory items to new non-volatile memory items.
10. (currently amended) A method for dynamically managing non-volatile memory items on a wireless device during registration to a network, said method allowing rollback to previous versions of software using said non-volatile memory items, said method comprising the steps of:	9. A method for dynamically managing non-volatile memory items on a wireless device from non-volatile memory item values stored in a software load on said wireless device, said method allowing rollback to previous versions of software using said non-volatile memory items, said method comprising the steps of:

on registration, checking the non-volatile memory items for a unique identifier item;	checking the non-volatile memory items for a unique identifier item;
if said unique identifier item exists, checking whether a value in said unique identifier item is the same as a software identifier;	if said unique identifier item exists, comparing an identifier stored within said unique identifier item with a software identifier located in software on said wireless device;
if said unique identifier item does not exist or if said identifier is different from said software identifier, performing the steps of:	and if said unique identifier item does not exist or if said identifier is different from said software identifier, performing the steps of:
sending said software identifier along with an identifier indicating a particular carrier telecommunications company associated with the wireless device to said network;	
receiving a set of changes from said network to update said non-volatile memory items, said updating step:	updating said non-volatile memory items from said non-volatile memory item values stored in the software load on said wireless device, said updating step:
creating a new non-volatile memory item rather than replacing an existing non-volatile memory item to facilitate rollback;	creating a new non-volatile memory item rather than replacing an existing non-volatile memory item to facilitate rollback;
retaining non-volatile memory items that have previously been created;	retaining non-volatile memory items that have previously been created;
avoiding non-volatile memory items created under other non-volatile memory management schemes;	and avoiding non-volatile memory items created by default or refurbished non-volatile memory files;
and writing said software identifier to said unique identifier item,	

whereby said creating, retaining and avoiding steps in said updating step allow rollback to previous versions of software on said wireless device; otherwise ending.	and writing said software identifier to said unique identifier item; … whereby said creating, retaining, and avoiding steps in said updating step allow rollback to previous versions of software on said wireless device. [else performing no update on said non-volatile memory items]
12. (currently amended) A wireless mobile station comprising: a receiver for receiving signals from a network; a transmitter for transmitting signals to a network; a digital signal processor for processing signals to be sent on said transmitter and received on said receiver; a microprocessor communicating with said digital signal processor; non-volatile memory having program storage and non-volatile memory items, said non\- volatile memory communicating with said microprocessor; and input and output subsystems interacting with said microprocessor, said microprocessor including:	10. A wireless communications device comprising: a receiver for receiving signals; a transmitter for transmitting signals; a digital signal processor for processing signals to be sent on said transmitter and received on said receiver; a microprocessor communicating with said digital signal processor; non-volatile memory having program storage and non-volatile memory items, said non-volatile memory communicating with said microprocessor; and input and output subsystems interacting with said microprocessor, wherein said microprocessor includes

means for checking said non-volatile memory items for a unique identifier item; means for checking whether a value stored in said unique identifier item is the same as a software identifier;	means for checking said non-volatile memory items for a unique identifier item, comparing an identifier stored within said unique identifier item with a software identifier located in software in said program storage if said unique identifier item exists;
means for updating said non-volatile memory;	[means for performing the steps of: updating said non-volatile memory items…]
wherein if said means for checking said non-volatile memory for a unique identifier item finds that said unique identifier item does not exist or said means for checking whether said value finds said value is different from said software identifier, **said wireless device sends said software identifier indicating a particular carrier telecommunications company associated with the wireless device to said network and receives a set of changes from said network,**	and if said unique identifier item does not exist or if said identifier is different from said software identifier, means for performing the steps of:
said means for updating said non-volatile memory executing said set of changes and writing said software identifier to said unique identifier item.	…updating said non-volatile memory items from said non-volatile memory item values stored in the software on said wireless device; and writing said software identifier to said unique identifier item; else performing no update on said non-volatile memory items.
13. (previously presented) The wireless	11. The wireless device of claim 10,

mobile station of claim 12, wherein said unique identifier item value and said software identifier are operating system version numbers of software in said program storage.	wherein said unique identifier and said software identifier are operating system version numbers of software in said program storage.

Regarding the limitation “sending said software identifier along with identifier indicating a particular carrier telecommunications company associated with the wireless device to said network; receiving from said network a set of changes related to said software identifier” present in independent claims 1, 10 and 12, while the claims of 7,222,340 do not explicitly teach these limitations they are obvious in view of Birum and Yu. Here, Birum Teaches:

-sending said software identifier along with an identifier **[0046, "a client can change a file, such as a configuration file, and cause that file to be sent back to a server." (Configuration file that consists of identifiers)]** … to said network [**Figure 1, "140"]**;

It would have been obvious to one of ordinary skill in the are to combine the claimed invention of 7,22,340 with the invention of Birum as Birum would allowed the claimed inventions to “…downloads the resources from the server [and] stores the resource locally…” (Birum Paragraph [0009]) which allows for distributed updating of software on a wireless system.

Birum does not explicitly teach: …an identifier indicating a particular carrier telecommunications company associated with the wireless device…

However, this limitation is taught by Yu. **(Col. 5, Ln 39-64, "In step 20 a mobile station originates/receives a call using standard call setup procedures. In step 22, the BSC accesses the DFC database for the mobile station originating/receiving the call using the mobile station's identifier as an index into the database to find the record corresponding to the mobile station either receiving/originating the call, and selecting from that record the preferred traffic carrier. After having determined the preferred traffic carrier for the mobile station at step 22, the BSC must determine whether that preferred traffic carrier is presently available at step 24.")**

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Birum with the teachings of Yu as Yu's disclosure teaches: " A further advantage of the present invention is that the DFC database allows for effortless software upgradeability and expansion of the testing system." (Col. 3, Ln 14-16.)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

15. Claims 1, 3-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birum et al (2003/0221189), in view of Yu et al (USPN 6,597,908).

Claim 1:

A method of dynamically managing non-volatile memory items in a wireless device through a network, said method comprising the steps of:

-when connecting to said network **([0051] "FIG. 1 shows a plurality of local area networks ("LANs") 120 and wide area network ("WAN") 130 interconnected by routers 110. Routers 110 are intermediary devices on a communications network that expedite message delivery. On a single network linking many computers through a mesh of possible connections")**

checking for a unique identifier item stored in said non-volatile memory items **[0022, "where resources that belong to a particular version of an application are identified and placed in a list (hereinafter this version is called "V1")"]**;

-if said unique identifier exists, checking whether a value stored in said unique identifier item is the same as a software identifier **(Paragraph [0006], "current version of an application is created and compared to the list of resources in a new version"; Paragraph [0029] If a resource exists both in V1 and in V2, the process moves to decision block 515, where the process compares the resource in V2 with the**

resource in V1. This comparison may be done through a byte-by-byte comparison, through a digital signature, or some other comparison.") located in software **([0009], "for the new version stored locally on the client" (Since software identifier stored in software, it is inherent that the new version must be stored locally.)]** on said wireless device **[Figure 1, "140"; 0051, "wireless links" teaches that the device is wireless.)]**;

-if said unique identifier item does not exist **([0039, "When a resource exists in V2 that does not exist in V1"])** or if said identifier is different from said software identifier (**[0030, "If the resources are different"])**,
sending said software identifier along with an identifier **[0046, "a client can change a file, such as a configuration file, and cause that file to be sent back to a server." (Configuration file that consists of identifiers)]** … to said network **[Figure 1, "140"]**;

-receiving from said network **[Figure 1; 0051, "receives transmitted messages"]** a set of changes related to said software **[0011, "resources needed for the new version that are not in the current version"]**;

-executing said set of changes
[Figure 7, "715"] to update said non-volatile memory items **[0043, "downloaded all or a subset of the resources required to change a version"]**; and

-writing said software identifier to said unique identifier item

[0045, "the process may maintain data contained in the old configuration file while modifying the configuration file to be compatible with the new version." (Modifying old configuration file to be compatible with new version allows easy tracking both old and new version)]

-otherwise end.

(See FIG. 4, #410, No step if there is no unique identifier identified with a version change.)

Birum does not explicitly teach: …an identifier indicating a particular carrier telecommunications company associated with the wireless device…

However, this limitation is taught by Yu. **(Col. 5, Ln 39-64, "In step 20 a mobile station originates/receives a call using standard call setup procedures. In step 22, the BSC accesses the DFC database for the mobile station originating/receiving the call using the mobile station's identifier as an index into the database to find the record corresponding to the mobile station either receiving/originating the call, and selecting from that record the preferred traffic carrier. After having determined the preferred traffic carrier for the mobile station at step 22, the BSC must determine whether that preferred traffic carrier is presently available at step 24.")**

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Birum with the teachings of Yu as Yu's disclosure teaches: " A further advantage of the present invention is that the DFC database allows for effortless software upgradeability and expansion of the testing system." (Col. 3, Ln 14-16.)

Claim 3:

-said writing step is performed after said updating step is complete

[0009, "client downloads the resources.., modifies a data structure..."; 0045, "while modifying the configuration file to be compatible with the new version."].

Claim 4:

-said updating step allows rollback to a previous software version

[0006, "the version of an application may be updated or rolled back"].

Claim 5:

-said updating step creates a new non-volatile memory item rather than replacing an existing non-volatile memory item to facilitate rollback to said existing non-volatile memory item.

[0045, "should not be overwritten...the upgrade list may specify that it should not be replaced."].

Claim 6:

-said updating step does not delete non-volatile memory items that have previously been created **[0041, "the client may or may not actually delete"; 0045, "upgrade list may specify that it should not be replaced."].**

Claim 7:

-non-volatile memory items managed under other non-volatile memory management schemes are not updated in said updating step

[0038, "If the client has the most recent version, it may begin executing an application associated with the content." (If the versions are the same then there is no need to update.)].

Claim 8:

-software on said wireless device includes a mapping from old non-volatile memory items to new non-volatile memory items

[0045, "process may maintain data contained in the old configuration file while modifying the configuration file to be compatible with the new version." (Modifying configuration file to make it compatible requires mapping of the two versions.)].

Claim 9:

-said mapping is modified using said set of changes

[0045, "process may maintain data contained in the old configuration file while modifying the configuration file to be compatible with the new version." (In order to modify old configuration file you need to have a set of changes to make it compatible with new version.)].

Claim 10:

A method for dynamically managing non-volatile memory items on a wireless device during registration to a network, said method allowing rollback to previous versions of software using said non-volatile memory items, said method comprising the steps of:

-on registration **[0051, are "intermediary devices on a communications network.., remotely connected"],** checking the non-volatile memory items for a unique identifier **[0022, "where resources that belong to a particular version of an application are identified and placed in a list (hereinafter this version is called "V1")"];**

-if said unique identifier item exists, checking whether a value in said unique identifier item is the same as a software identifier; **[0006, "current version of an application is created and compared to the list of resources in a new version"; 0029, "where the process compares the resource in V2 with the resource in V1 ."]**

-if said unique identifier item does not exist **[0039, "when a resource exists in V2 that does not exist in V1..."]** or if said identifier is different from said software identifier **[0030, "If the resources are different..."]**, performing steps of:

-sending said software identifier along with an identifier **[0046, "a client can change a file, such as a configuration file, and cause that file to be sent back to a server." (Configuration file that consists of identifiers)]**...to said network **[Figure 1, "140"]**;

-receiving a set of changes from said network **[Figure 1; 0051, "receives transmitted messages"]** to update said non-volatile memory items, said updating step: **[0011, "resources needed for the new version that are not in the current version"]**

-creating a new non-volatile memory item rather than replacing an existing non-volatile memory item to facilitate rollback;
[0045, "should not be overwritten...the upgrade list may specify that it should not be replaced."]

-retaining non-volatile memory items that have previously been created;
[0041, "the client may or may not actually delete"; 0045, "upgrade list may specify that it should not be replaced."]

-avoiding non-volatile memory items created under traditional management;

[0045, "When so designated, if such resources do not exist on a client computer, they may be updated with a "default"..." ("Traditional provisioning mechanisms" are considered well-known methods because "traditional" indicates old and well known.)]

-writing said software identifier to said unique identifier item **[0045, "the process may maintain data contained in the old configuration file while modifying the configuration file to be compatible with the new version." (Modifying old configuration file to be compatible with new version allows easy tracking both old and new version)],** whereby said creating, retaining, and avoiding steps in said updating step allows rollback to previous versions of software on said wireless device **[0006, "the version of an application may be updated or rolled back"]**

-otherwise ending.

See FIG. 4, #410, No step if there is no unique identifier identified with a version change.

Birum does not explicitly teach: …an identifier indicating a particular carrier telecommunications company associated with the wireless device…

However, this limitation is taught by Yu. **(Col. 5, Ln 39-64, "In step 20 a mobile station originates/receives a call using standard call setup procedures. In step 22, the BSC accesses the DFC database for the mobile station originating/receiving the**

call <u>using the mobile station's identifier as an index into the database to find the record corresponding to the mobile station either receiving/originating the call, and selecting from that record the preferred traffic carrier.</u> After having determined the preferred traffic carrier for the mobile station at step 22, the BSC must determine whether that preferred traffic carrier is presently available at step 24.")

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Birum with the teachings of Yu as Yu's disclosure teaches: " A further advantage of the present invention is that the DFC database allows for effortless software upgradeability and expansion of the testing system." (Col. 3, Ln 14-16.)

Claim 12:

A wireless communication device comprising:

-a receiver for receiving signals from a network; **[0051, "receives transmitted messages"]**

-a transmitter for transmitting signals to a network; **[0051, "receives transmitted messages and forwards them to their correct destinations over available routes."]**

-a digital signal processor for processing signals to be sent on said transmitter and received on said receiver; **[Figure 3, "302"]**

-a microprocessor communicating with said digital signal processor; **[Figure 3, "306"]**

-non-volatile memory having program storage and non-volatile memory items **[0061, "Computer storage media may include volatile and nonvolatile, removable..."]**, said non-volatile memory communicating with said microprocessor **[0051, "many computers through a mesh of possible connections..."; 0061, "store the desired information and which can be accessed by a computing device."]**; and input and output subsystems interacting with said microprocessor,

wherein said microprocessor including: **[Figure 3, "320"]**

-means for checking said non-volatile memory items for a unique identifier item, **(See FIG. 4 & related text at [0022]. Resources are listed for a current version at 405 (software identifiers for resource items in V1). At step 430 (& FIG. 6) resource list, with unique identifier item, for V2 is identified.)**

-means for checking whether a value stored in said unique identifier item is the same as a software identifier

[0006, "current version of an application is created and compared to the list of resources in a new version"; 0029, "where the process compares the resource in V2 (unique identifier items) with the resource in Vl (software identifiers)."];

-means for updating said non-volatile memory; **[0045, "downloaded all or a subset of the resources required to change a version"]**

-wherein if said means for checking said non-volatile memory for a unique identifier item finds that said unique identifier item does not exist **[0039, "When a resource exists in V2 that does not exist in V1"]** or said means for checking whether said value finds said value is different from said software identifier **[0030, "If the resources are different"]**,

-said wireless device sends said software identifier to said network and receives a set of changes, **[0046, "a client can change a file, such as a configuration file, and cause that file to be sent back to a server." (Configuration file that consists of identifiers); 0051, "receives transmitted messages"] from said network [Figure 1]**

-said means for updating said non-volatile memory executing said set of changes **[0043, downloaded all or a subset of the resources required to change a version]**

-and writing said software identifier to said unique identifier item.

[0045, "the process may maintain data contained in the old configuration file while modifying the configuration file to be compatible with the new version." (Modifying old configuration file to be compatible with new version allows easy tracking both old and new version)]

Birum does not explicitly teach: …an identifier indicating a particular carrier telecommunications company associated with the wireless device…

However, this limitation is taught by Yu. **(Col. 5, Ln 39-64, "In step 20 a mobile station originates/receives a call using standard call setup procedures. In step 22, the BSC accesses the DFC database for the mobile station originating/receiving the call using the mobile station's identifier as an index into the database to find the record corresponding to the mobile station either receiving/originating the call, and selecting from that record the preferred traffic carrier. After having determined the preferred traffic carrier for the mobile station at step 22, the BSC must determine whether that preferred traffic carrier is presently available at step 24.")**

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Birum with the teachings of Yu as Yu's disclosure teaches: " A further advantage of the present invention is that the DFC database allows for effortless software upgradeability and expansion of the testing system." (Col. 3, Ln 14-16.)

15. Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birum et al (2003/0221189), in view of Yu et al (USPN 6,597,908) and further in view of in view of Moore et al (2002/0078142).

Claim 2 and 13:

Birum teaches the limitations of claims 1 and 12, and Moore further teaches the limitations of Claims 2 and 13: and in addition the identifiers are version numbers **[Figure 6A].**. In addition, it would be obvious to one of ordinary skill in the art to apply the system versions numbers in Moore to the Birum invention as the two references are in the same field of endeavor, and the use of version numbers provides a tool of comparing operating system products. (Moore Paragraph [0008] “The information may be organized into records that identify things such as whether an online driver exists for the device, and if so, **what its version number is**, **so that other detected versions of that driver (e.g., on a local hard drive) can be compared** against the online version to determine which is the most-recent version and/or the "best match.") further, the well-known comparison of version numbers suggested in Moore would be obvious to try, with both a predictable result (a successful comparison mechanism) and a reasonable expectation of success.

Response to Arguments

Applicant's arguments, see Remarks, filed August 31, 2009, with respect to the rejection(s) of claim(s) 1-10, 12 and 13have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of US Patent 6,597,908 to Yu.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. BROPHY whose telephone number is 571-270-1642. The examiner can normally be reached on Monday-Thursday 8:00AM-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJB
9/28/2009

/Anna Deng/
Primary Examiner, Art Unit 2191